

No. 626

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

E. C. EVANS,

Appellant,

VS.

THE COLLECTOR OF CUSTOMS
OF THE PORT OF SAN FRAN-
CISCO,

Appellee.

TRANSCRIPT OF RECORD.

Upon Appeal from the Circuit Court of the United
States for the Ninth Circuit, in and for the
Northern District of California.

FILMER-ROLLINS Co. Printers, 224 Sansome St., S. F.

FILED

AUG 22 1900

INDEX.

	Page
Appeal, Bond on.....	27
Appeal, Order Allowing	25
Appeal, Petition for.....	24
Assignment of Errors.....	25
Bill of Exceptions.....	21
Board of General Appraisers to Make Return, etc., Order Directing.....	6
Board of United States General Appraisers, Return of the... ..	11
Bond on Appeal.....	27
Certificate, Clerk's, to Record.. .. .	30
Certified Copy of Order Directing Board of Apprais- ers to Make Return, etc., with Return of Service by Marshal.....	8
Citation.. .. .	31
Clerk's Certificate to Record.....	30
Errors, Assignment of	25
Exceptions, Bill of	21
Exhibit "A".....	12

	Page
Exhibit "B".....	12
Exhibit "C".....	14
Findings.....	17
Findings, Judgment on	18
Judgment on Findings	18
Merchandise, etc., Stipulation as to.....	16
Order Allowing Appeal	25
Order Directing Board of Appraisers to Make Return, etc., with Return of Service by Marshal, Certified Copy of.....	8
Order Directing Board of General Appraisers to Make Return, etc.....	6
Petition for Appeal.....	24
Petition for Review.....	1
Record, Clerk's Certificate to.....	30
Return, etc., Order Directing Board of General Appraisers to Make.....	6
Return of the Board of United States General Appraisers.....	11
Review, Petition for....	1
Stipulation as to Merchandise, etc.....	16
United States General Appraisers, Return of the Board of.....	11

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal.

Petition for Review.

To the Honorable Circuit Court of the United States,
Ninth Circuit, in and for the Northern District of
California:

The petition and application of E. C. Evans respect-
fully represents and shows to this Honorable Court that
on the 4th day of August, 1897, your petitioner imported
from Tonquin, in China, into the port of San Francisco,
in the ship "Kambira," certain merchandise, to wit,
1711.1902 tons of anthracite coal, which said merchan-
dise is more fully described in an entry for consumption
made thereon in the office of the Collector of Customs at
said port of San Francisco on or about the 19th day of
August, 1897, and numbered 10,063 of the official serial
numbers of the custom-house at said port.

That upon the entry of said merchandise the collector
of said port of San Francisco classified said merchandise
as "Coal containing less than 92 per cent of fixed carbon"

under the act of Congress of July 24th, 1897, entitled "An act to provide revenue for the Government and to encourage the industries of the United States."

That thereafter, on the 15th day of September, 1897, said entry was liquidated by said collector upon such classification at the rate of duty of sixty-seven cents per ton, and said duty at said rate upon such merchandise, amounting to the sum of twelve hundred and seventy and 0-100 dollars, was ascertained, levied and liquidated by said collector, and that the said amount so ascertained, levied and liquidated by said collector, together with all charges ascertained to be due upon said merchandise, was thereupon paid by your petitioner to said collector. That within ten days after such ascertainment, liquidation and payment of said duty, to wit, on the 21st day of September, 1897, your petitioner being dissatisfied with said classification, ascertainment and liquidation of said entry, gave notice in writing to said Collector of Customs of his such dissatisfaction, which written notice and protest are numbered 41,600 B-4248, and distinctly and specifically set forth the reasons and grounds of and for your petitioner's objections thereto, in language as follows, to wit: "The grounds of our objections are that said importation is anthracite coal and so known to the trade commercially, being invoiced, manifested, bought, sold and trafficked in only as anthracite coal, and is entitled to free entry as specially provided for by name under paragraph 523 in the free list of the act of July 24th, 1897, as coal, anthracite, not specially provided for by name elsewhere in said act."

That thereafter, in due and proper time, said Collector of Customs transmitted all papers and exhibits on which said entry and liquidation and exaction of duty was made, including the invoice and all the papers and exhibits connected therewith, to the Board of United States General Appraisers at New York, State of New York, United States of America, and that thereafter, to wit, on October 24th, 1899, said Board of United States General Appraisers made its decision in said matter in favor of said classification, ascertainment and decision so made by said Collector of Customs and overruling said protest and objections thereto.

That your petitioner avers that he is dissatisfied with the said assessment and liquidation and exaction of duty so made by said collector, and dissatisfied with said decision of said Board of United States General Appraisers as to the construction of the law respecting the classification of said merchandise and the duty imposed thereon under such classification.

Wherefore, your petitioner appeals to this Honorable Court, and prays and applies for a review of the questions of law and fact involved in said decision of the said Board of United States General Appraisers in respect to said entry and said payment of duties, and your petitioner specifies as the reasons for his objections to said decision the following errors of law committed by said Board of United States General Appraisers in said decision and which are complained of by your petitioner, to wit:

First.—Error of law in holding and deciding that the coal covered by and described in said entry was properly

classified as "Coal containing less than 92 per cent of fixed carbon" under paragraph 415 of said act.

Second.—Error of law in not holding and deciding that said coal affected by and described in said entry should have been classified as anthracite not specially provided for in said act.

Third.—Error of law in holding and deciding that although the coal affected by and described in said entry was anthracite coal, yet, because it contained less than 92 per cent of fixed carbon, it was subject to duty under paragraph 415 of said act.

Fourth.—Error of law in holding and deciding that anthracite coal containing less than 92 per cent of fixed carbon is specially provided for under paragraph 415 of said act.

Fifth.—Error of law in holding and deciding that anthracite coal containing less than 92 per cent of fixed carbon is not entitled to free entry under paragraph 523 of said act.

And your petitioner prays this Honorable Court for an order requiring said Board of United States General Appraisers to return and transmit to this Court the record and the evidence taken by them in the matter of their said decision, with a certified statement of the facts involved in said case and their decision thereon, and that upon such record and evidence and such further evidence as may be taken herein this Honorable Court will proceed to hear and determine the questions of law and fact involved in said decision respecting the classification of said merchandise and the duty chargeable thereon under said classification, and that upon such deter-

mination said decision of said Board of United States General Appraisers be reversed and set aside, and that it be adjudged that said merchandise should be admitted free of duty, and that your petitioner may recover and may have judgment for the full sum of duty levied, liquidated and paid to said collector upon said merchandise as aforesaid with interest and costs, and that this Honorable Court afford such other and further relief to petitioner as may be right and just in the premises.

SMITH & PRINGLE,

Attorneys for Petitioner, Evan C. Evans.

United States of America,)
Northern District of California. } ss.

I hereby return that I served the annexed petition on J. P. Jackson, Collector of Port of San Francisco, by handing to and leaving a true and correct copy thereof with said J. P. Jackson, personally, at san Francisco, in said district, on the 23d day of November, A. D. 1899.

JOHN H. SHINE,

United States Marshal.

By S. P. Monckton,

Office Deputy.

Filed November 23d, 1899. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal.

**Order Directing Board of General Appraisers to Make Return,
etc.**

Whereas, E. C. Evans, as importer, has applied to this Court for a review of the questions of law and fact involved in the decision of the Board of United States General Appraisers, on duty at the port of New York, State of New York, which said decision was made and rendered on the 24th day of October, 1899, classifying certain merchandise for duty as "Coal containing less than ninety-two per cent of fixed carbon, under paragraph 415 of the act of Congress, entitled 'An act to provide revenue for the Government, and to encourage the industries of the United States,' approved July 24, 1897, which said merchandise was imported into the port of San Francisco, California, and entered at the custom-house of said port on the 19th day of August, 1897, and is more fully described as being the merchandise subject to consumption entry No. 10,063, made at the custom-house, at said port of San Francisco, and whereas said Evans has filed in

the office of the clerk of this court a concise statement of the errors of law and fact in said decision complained of by him, and a copy of such statement has been served on the United States Collector of Customs for the port of San Francisco:

Now, therefore, upon consideration of the premises, and upon the motion of Messrs. Smith & Pringle, attorneys for said petitioner, it is hereby ordered that the Board of United States General Appraisers, on duty at the port of New York, State of New York, do, with all convenient speed, return and transmit to this Court the record of the matter of their said decision and the evidence taken by them, together with a certified statement of the facts involved in the case, and their decision thereon, and it is further ordered that this order be entered in the minutes of this court, and be served by the United States marshal for the Southern District of New York on each member of said board, by delivering to each of them a certified copy thereof.

Dated November 25th, 1899.

WM. W. MORROW,
Judge.

[Endorsed]: Filed and entered November 25th, 1899.
Southard Hoffman, Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal.

**Certified Copy Order Directing Board of Appraisers to Make
Return, etc., with Return of Service by Marshal.**

Whereas, E. C. Evans, as importer, has applied to this Court for a review of the questions of law and fact involved in the decision of the Board of United States General Appraisers, on duty at the port of New York, State of New York, which said decision was made and rendered on the 24th day of October, 1899, classifying certain merchandise for duty as "Coal containing less than ninety-two per cent of fixed carbon, under paragraph 415 of the act of Congress entitled "An act to provide revenue for the Government, and to encourage the industries of the United States," approved July 24, 1897, which said merchandise was imported into the port of San Francisco, California, and entered at the custom-house of said port on the 19th day of August, 1897, and is more fully described as being the merchandise subject to consumption entry No. 10,063, made at the cus-

tom-house, at said port of San Francisco, and whereas said Evans has filed in the office of the clerk of this court a concise statement of the errors of law and fact in said decision complained of by him, and a copy of such statement has been served on the United States Collector of Customs for the port of San Francisco:

Now, therefore, upon consideration of the premises, and upon the motion of Messrs. Smith & Pringle, attorneys for said petitioner, it is hereby ordered that the Board of United States General Appraisers, on duty at the port of New York, State of New York, do, with all convenient speed, return and transmit to this Court the record of the matter of their said decision and the evidence taken by them, together with a certified statement of the facts involved in the case, and their decision thereon, and it is further ordered that this order be entered in the minutes of this Court, and be served by the United States marshal for the Southern District of New York on each member of said board, by delivering to each of them a certified copy thereof.

Dated November 25th, 1899.

WM. W. MORROW,
Judge.

[Endorsed]: Filed and entered November 25th, 1899.
Southard Hoffman, Clerk.

United States of America,
 Northern District of California,
 City and County of San Francisco.) ss.

I, Southard Hoffman, clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order signed, filed and entered on the 25th day of November, A. D. 1899, as the same appears of record in the clerk's office of said court in the therein entitled matter.

Attest my hand and the seal of said Circuit Court, this 25th day of November, A. D. 1899. |

[Seal] SOUTHARD HOFFMAN,
 Clerk of the United States Circuit Court, Ninth Judicial
 Circuit, Northern District of California.

[10 cents Internal Rev. Stamp.]

[Endorsed]: I hereby certify that on the 4th day of December, 1899, at the city of New York, in my district, I personally served an order, of which the annexed is a certified copy, upon H. M. Somerville, I. S. Fischer and J. B. Wilkinson, Jr., the Board of United States General Appraisers, on duty at the port of New York, State of New York, by delivering to and leaving with each of said general appraisers a certified copy of said order.

Dated, New York, December 4th, 1899.

WILLIAM HENKEL,
 United States Marshal, Southern District of New York.

Filed December 21, 1899. Southard Hoffman, Clerk.

Return of the Board of United States General Appraisers.

*In the Circuit Court of the United States for the Northern
District of California.*

J. A. LAKE, Chief Clerk Board of U. S. General Appraisers.

In the Matter of the Application of E. C. EVANS for Review of the Decision of the Board of United States General Appraisers, as to the Rate, etc., of Duty on Certain Coal Imported by him per "Kambria," August 19, 1897. } Suit No. 1452.

Return of the Board of United States General Appraisers to the order of Hon. WM. W. MORROW, Circuit Judge.

Dated New York, Feb. 1, 1900.

The board of United States General Appraisers, sitting at New York, in response to the order of the Court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that a letter, a copy of which is hereto annexed as Exhibit "A," was received from the Collector of Customs at New York, submitting, under the provisions of section 14 of the act of June 10, 1890, the protest marked Exhibit "B," and described as follows:

Colls. No.	Board No.	Protestants.	Vessel.	Date of Entry.
4248	41600-B	E. C. Evans	Kambria	Aug. 19, '97

On October 24th, 1899, the board rendered its decision upon said protest. A copy of the opinion is annexed as Exhibit "C."

Exhibit "A."

(Copy.)

Office of the Collector of Customs,
Port of San Francisco,

Aug. 8, 1899.

Hon. Henderson M. Somerville, Chairman Board of Classification of Board of Gen. Appraisers, New York, N. Y.

Sir: I respectfully acknowledge the receipt of your letter of July 31, 1899, 41407-B, in relation to classification of coal claimed to be anthracite, and, as requested therein, beg to transmit herewith 43 protests, numbered from 4247 to 4289, involving the question of the proper classification of coal containing less than 92 per cent of fixed carbon, and claimed to be entitled to free entry under paragraph 523 of the existing statute.

The requirements of section 14 of the act of June 10, 1890, have been complied with.

(Sd.) I. P. JACKSON,
Collector.

Exhibit "B."

PROTEST.

San Francisco, Sept. 21, 1897.

To the Collector of Customs, District and Port of San Francisco,

Sir: We hereby protest against the liquidation of our entry, and the assessment and payment of duties as ex-

acted by you on 1711-19-0-2 tons anthracite coal, marks and numbers said to be N-N N-M, but this protest is intended to cover and apply to all the goods of the same kind and character mentioned in the invoice or entry, whether specifically mentioned herein or not.

Said merchandise was imported by us on the 4th day of August, 1897, in the "Kambira" from Tonquin, and is more fully described in Deposit Entry No. 10063.

The grounds of our objections are that said importation is anthracite coal, and so known to the trade commercially, being invoiced, manifested, bought, sold, and trafficked in only as anthracite coal, and is entitled to free entry as specially provided for by name under paragraph 523 in the free list of the act of July 24th, 1897, as coal anthracite, not specially provided for by name elsewhere in said act.

We pay the amount exacted solely to obtain possession of the goods, and claim that the entry should be readjusted, and the amount overcharged refunded to us.

Yours, respectfully,

EVAN C. EVANS.

[Endorsed]: Entry No. 10,063. Bond No. . Protest. San Francisco, Sept. 21, 1897. Messrs. E. C. Evans. Against liquidation of entry assessment, and exaction of 67 cents ton on anthracite coal. Vessel, "Kambira." From Tonquin. Date of arrival, Aug. 4th, 1897. Date of entry, Aug. 19th, 1897. Date of liquidation, Sept. 15th, 1897.

Adjuster's Office, Custom-House, S. F., Cal. Received
Sep. 23, 1897, W.

Exhibit "C."

No. Pages

Typewritten by Miss Coyce.

Compared by Miss Clark.

General Appraisers.

Form 53.

Not for Publication.

Dictated.

In the Matter of the Protests 35716-B,
etc., of Meyer, Wilson & Co. et al.,
against the decision of the Collector of
Customs at San Francisco, Cal., as to
the Rate and Amount of Duties
Chargeable on Certain Merchandise
(Coal) Imported per the Vessels and
Entered on the Dates Specified in the
Schedule Hereto Appended.

Before the U. S.
General Apprais-
ers at New York,
Oct. 24, 1899.

Opinion by Tichenor, G. A.:

We find as matter of fact that the merchandise in ques-
tion is coal which contains less than 92 per cent of fixed
carbon.

We hold in accordance with the decision of the United
States Circuit Court for the Northern District of Califor-
nia, in the suit of Chas. P. Coles, rendered April 23, 1899,

(95 Fed. Rep. 954), and upon the authority of G. A. 4484, that this merchandise was properly assessed for duty at 67 cents per ton under the provisions of paragraph 415, act of July 24, 1897, and overruled the protests which claim that it is exempt from duty under paragraph 523 of said act.

(Sig.) H. M. SOMERVILLE,
I. F. FISCHER,
J. B. WILKINSON, Jr.,

Board of Classification of U. S. General Appraisers.
Schedule.
41600-B.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said board than such as are shown by said decision and other exhibits hereto attached.

H. M. SOMERVILLE,
GEO. C. TICHENOR,
I. F. FISCHER,

Board of U. S. General Appraisers.

[Endorsed]: Return of the Board of United States General Appraisers. Filed February 6, 1900. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

In the Matter of the Application of E. C.
EVANS for Review of a Decision of
the Board of United States General
Appraisers, Dated October 24th, 1899,
as to the Duty to be Paid on Certain
Anthracite Coal.

Stipulation as to Merchandise, etc.

For the purposes of the trial of the above-entitled action, it is hereby stipulated and agreed and admitted that the merchandise in question in this case was a cargo of anthracite coal imported from Tonquin into the port of San Francisco, in California, subsequent to the twenty-fourth day of July, 1897. The cargo contained less than ninety-two per cent of fixed carbon; and that the word "anthracite" is a commercial definition applied to coal having certain characteristics distinguishing it from other coals.

Dated August 11th, 1900.

MARSHALL B. WOODWORTH,
Assistant United States Attorney.
SIDNEY V. SMITH,
Attorney for E. C. Evans.

[Endorsed]: Filed August 11th, 1900. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal.

Findings.

The above case having regularly come up before the Court on appeal from the Board of United States General Appraisers, and due consideration having been had, the Court now makes and files its findings of fact, as follows:

I.

The merchandise in question in this case was a cargo of anthracite coal imported from Tonquin into the port of San Francisco, in California, subsequent to the twenty-fourth day of July, 1897. The cargo contained less than ninety-two per cent fixed carbon.

II.

The word "anthracite" is a commercial definition applied to coal having certain characteristics distinguishing it from other coals.

Upon the foregoing facts, I find, as a matter of law, that the imported article is properly classified under the

head of "Coal containing less than ninety-two per centum of fixed carbon," and is subject to duty at the rate of sixty-seven cents per ton under paragraph four hundred and fifteen of the act of July 24th, 1897, and that the decision of the Board of United States General Appraisers that it is subject to duty at such rate should be sustained.

It is ordered that judgment be entered herein accordingly.

Dated August 11th, 1900.

WM. W. MORROW,
Judge.

[Endorsed]: Filed August 11th, 1900. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal.

Judgment on Findings.

This matter came on regularly for hearing, the parties appearing by their attorneys, Sidney V. Smith ap-

peared on behalf of the petitioner, E. C. Evans, and Marshall B. Woodworth, Assistant United States Attorney, appeared on behalf of the United States. The matter was tried before the Court, upon the pleadings, proofs, and arguments of counsel, duly heard and considered, and the Court having found the facts and the conclusions of law thereupon, filed the same, and ordered that judgment be entered in accordance therewith.

Wherefore, by virtue of the law and the findings aforesaid, it is ordered, adjudged, and decreed that the imported article named in the petition herein is properly classified under the head of "Coal containing less than ninety-two per centum of fixed carbon," and that the decision of the Board of General Appraisers that it is not free of duty, and that it should be charged with a duty of sixty-seven cents per ton, be, and the same is, hereby sustained.

Judgment entered August 11, 1900.

SOUTHARD HOFFMAN,

Clerk.

A true copy.

Attest:

[Seal]

SOUTHARD HOFFMAN,

Clerk.

[Endorsed]: Filed August 11th, 1900. Southard Hoffman, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

<p>In the Matter of the Application of E. C. EVANS for Review of a Decision of the Board of United States Gen- eral Appraisers, etc.</p>	}	No. 12,846.
--	---	-------------

Certificate to Judgment-Roll.

I, Southard Hoffman, clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled matter.

Attest my hand and the seal of said Circuit Court, this 11th day of August, 1900.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By W. B. Beazley,

Deputy Clerk.

[Endorsed]: Filed August 11th, 1900. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal.

Bill of Exceptions.

Be it remembered that on the 11th day of August, 1900, the said matter came on regularly to be heard in the United States Circuit Court, Ninth Circuit, in and for the Northern District of California, upon the petition of the above-named petitioner and appellant, E. C. Evans, duly filed in said court, praying for a review of the decision of the Board of United States General Appraisers heretofore made herein sustaining the action of the Collector of Customs for the port of San Francisco, in said Circuit and District and State herein, and upon the return to said court of said Board of United States General Appraisers herein, and upon the stipulation of the parties hereto filed herein, which is in the words and figures following.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal.

For the purposes of the trial of the above-entitled ac-
tion, it is hereby stipulated and agreed and admitted
that the merchandise in question in this case was a cargo
of anthracite coal imported from Tonquin into the port
of San Francisco, in California, subsequent to the twenty-
fourth day of July, 1897. The cargo contained less than
ninety-two per cent of fixed carbon; and that the word
“anthracite” is a commercial definition applied to coal
having certain characteristics distinguishing it from
other coals.

Dated August 11th, 1900.

MARSHALL B. WOODWORTH,
Assistant United States Attorney.

SIDNEY V. SMITH,
Attorney for E. C. Evans.

Now, therefore, whereas the foregoing matters here-
inbefore particularly set forth, appear not of record to
the end that said matters, and all thereof, may be pre-
served and made of record, your petitioner, the above-

named E. C. Evans, hereby respectfully presents to this Honorable Court the foregoing bill of exceptions, and prays that the same may be settled and allowed as and for the bill of exceptions in the above-numbered and mentioned case.

E. C. EVANS,

Petitioner and Appellant.

By SIDNEY V. SMITH,

His Attorney.

It is hereby stipulated by and between the parties hereto, and their respective counsel, that the foregoing bill of exceptions contains a full, true, and correct report and statement of all the testimony and evidence introduced by either side in the above-mentioned and numbered case, and may be settled, allowed, and approved as and for such bill of exceptions, and ordered filed as of August 11th, 1900.

SIDNEY V. SMITH,

Attorney for E. C. Evans.

MARSHALL B. WOODWORTH,

Assistant United States Attorney.

The foregoing bill of exceptions in the above case is hereby settled, allowed and approved, and ordered filed nunc pro tunc as of August 11th, 1900.

Dated August 11th, 1900.

WM. W. MORROW,

Circuit Judge.

[Endorsed]: Filed August 11th, 1900. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal.

Petition for Appeal.

The above-named petitioner, appellant herein, conceiv-
ing himself aggrieved by the decision and judgment ren-
dered and entered on the eleventh day of August, 1900,
in the above-entitled and numbered case, doth hereby ap-
peal from said decision and judgment to the United
States Circuit Court of Appeals, for the Ninth Circuit,
and prays that this his appeal may be allowed, and that
a transcript of the record and proceedings and papers
upon which said decision and judgment were made and
rendered, duly authenticated, may be sent to said Cir-
cuit Court of Appeals.

Dated August 13th, 1900.

E. C. EVANS,
Petitioner and Appellant.
By SMITH & PRINGLE,
His Attorneys.

Order Allowing Appeal.

And now, to wit, on the 13th day of August, 1900, it is ordered that said appeal be allowed as prayed for, on filing bond in the sum of five hundred dollars.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: Filed August 13th, 1900. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

In the Matter of the Application of E. C. EVANS for Review of a Decision of the Board of United States General Appraisers, Dated October 24th, 1899, as to the Duty to be Paid on Certain Anthracite Coal.

Assignment of Errors.

And now upon this 13th day of August, 1900, comes the above-named petitioner and appellant, by Smith & Pringle, his attorneys, and says that in the record herein there is manifest error in this, to wit:

I.

That the said Circuit Court erred in finding and deciding that the merchandise herein is not entitled to admission free of duty under paragraph 523 of the act of July 24, 1897, entitled "An act to provide revenue for the Government, and to encourage the industries of the United States."

II.

That the said Circuit Court erred in finding and deciding that the merchandise involved herein should be classified as "Coal containing less than ninety-two per cent of fixed carbon."

III.

That the said Circuit Court erred in finding and deciding that the merchandise involved herein is subject to a duty of sixty-seven cents per ton.

IV.

That the said Circuit Court erred in not finding and deciding that the merchandise involved herein is anthracite coal entitled to admission free of duty, under paragraph 523 of said act.

V.

That the said Circuit Court erred in holding, adjudging and deciding that the decision of the Board of United States General Appraisers herein should be sustained.

VI.

That the said Circuit Court erred in holding, adjudging and deciding that judgment should be entered affirming the said decision of the Board of United States General Appraisers herein.

VII.

That the said Circuit Court erred in not holding, adjudging and deciding that the decision of the Board of United States General Appraisers herein should be reversed.

VIII.

That the said Circuit Court erred in not holding, adjudging and deciding that judgment should be entered for the petitioner and appellant herein in accordance herewith.

SMITH & PRINGLE,

Attorneys for Petitioner and Appellant.

[Endorsed]: Filed August 13, 1900. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Circuit, Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal.

Bond on Appeal.

Know all men by these presents, that we, E. C. Evans, as principal, and John L. Howard and Sidney V. Smith, as sureties, are held and firmly bound unto the Collector

of the Port of San Francisco, in the full and just sum of five hundred dollars, to be paid to the said Collector of the Port of San Francisco, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 13th day of August, in the year of our Lord one thousand nine hundred.

Whereas, lately at a session of the Circuit Court of the United States, for the Northern District of California, in the above-entitled cause judgment was rendered against the said E. C. Evans having obtained from said Court permission to appeal from said judgment, to reverse the said judgment in the aforesaid court, and a citation directed to the said Collector of the Port of San Francisco is about to be issued, citing and admonishing said Collector to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the 12th day of September next:

Now, the condition of the above obligation is such, that if the said E. C. Evans shall prosecute said appeal to effect, and shall answer all damages and costs that shall be awarded against him, if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

A. B. WILLIS.

CHAS. P. COLES.

EVAN C. EVANS,

By his Attorneys in Fact.

United States of America,
Northern District of California,
City and County of San Francisco. } ss.

John L. Howard and Sidney V. Smith, being duly sworn, each for himself, deposes and says, that he is a householder in said district, and is worth the sum of one thousand dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

JOHN L. HOWARD.

SIDNEY V. SMITH.

Subscribed and sworn to before me this 13th day of August, A. D. 1900.

[Seal]

HOWARD HARRON,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Bond on appeal. Approved, Wm. W. Morrow, Circuit Judge. Filed August 13, 1900. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, Ninth Judicial Circuit,
Northern District of California.*

In the Matter of the Application of E.
C. EVANS for Review of a Decision
of the Board of United States Gen-
eral Appraisers, Dated October 24th,
1899, as to the Duty to be Paid on
Certain Anthracite Coal. } No. 12,846.

Clerk's Certificate to Record.

I, Southard Hoffman, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing pages, numbered from one to twenty-seven, inclusive, to be a full, true, and correct copy of the record and proceedings in the above-entitled matter, and that the same together constitute the transcript of the record herein, upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$17.35, and that said amount was paid by.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 15th day of August, A. D. 1900.

[Seal]

SOUTHARD HOFFMAN,
Clerk of United States Circuit Court, Ninth Judicial Circuit, Northern District of California.

[Ten Cent U. S. Int. Rev. Stamp Canceled.]

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to the Collector of Customs of the Port of San Francisco, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, on the 12th day of September next, pursuant to an order allowing an appeal filed in the clerk's office of the Circuit Court of the United States, Ninth Circuit, Northern District of California, in a certain action numbered 12,846, wherein E. C. Evans is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said E. C. Evans as in the said judgment mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable WM. W. MORROW, Judge of the United States Circuit Court, Ninth Circuit, Northern District of California, this 13th day of August, A. D. 1900.

WM. W. MORROW,
Judge.

Service of within citation and receipt of a copy thereof is hereby admitted this 14th day of August, 1900.

MARSHALL B. WOODWORTH,

Assistant United States Attorney, Attorney for Appellee.

[Endorsed]: No. 12,846. Circuit Court of the United States, Ninth Circuit, Northern District of California. E. C. Evans, Appellant, vs. The Collector of Customs of the Port of San Francisco, Appellee. Citation. Filed August 14, 1900. Southard Hoffman, Clerk.

[Endorsed]: No. 626. In the United States Circuit Court of Appeals, for the Ninth Circuit. E. C. Evans, Appellant, vs. The Collector of Customs of the Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the Circuit Court of the United States, for the Ninth Circuit, in and for the Northern District of California.

Filed August 16th, 1900.

F. D. MONCKTON,

Clerk.